

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION -- DIVISION OF FINANCIAL ASSISTANCE
DECEMBER 9, 2005

ITEM 1

SUBJECT

WITHDRAWAL OF FUNDING FOR THE LOS OSOS COMMUNITY SERVICES DISTRICT (DISTRICT); WASTEWATER COLLECTION, TREATMENT AND DISPOSAL PROJECT (PROJECT); STATE REVOLVING FUND (SRF) LOAN PROJECT NO. C-06-4014-110

DISCUSSION

The District's proposed Project has evolved through a long history of design changes and legal delays since the initial SRF loan commitment of \$47,000,000 approved by the State Water Resources Control Board (State Water Board) on February 15, 1990. The latest SRF loan recommitment of \$93,000,000 was approved by the State Water Board on January 20, 2005, with a deadline for the District to issue Notice-to-Proceed with construction of the Project by September 20, 2005.

On July 16, 2005, the District issued Notices-to-Proceed to three primary contractors for construction of three phases of the Project. The SRF loan agreement for \$134,761,390 was executed and approved by the Department of General Services on August 8, 2005, and the District requested its first disbursement of loan funds in the amount of \$6,486,144 on August 19, 2005. The Division of Financial Assistance (Division) approved the initial disbursement on August 22, 2005, and monitored Project construction until the District suspended the work of its three primary contractors on October 3, 2005. The District suspended construction of the proposed Project based on the outcome of the September 27, 2005, Special Election.

The Division sent a letter October 18, 2005, to the District notifying it that disbursements are being withheld because of the District's decision to suspend construction of the Project. Division staff believed that the District's action was in breach or threatened breach of the SRF loan agreement by substantially changing the scope of the approved Project, in this case, the District's intention to relocate the wastewater treatment plant site based on the outcome of the Special Election.

The District proposed a compromise to resolve the current impasse in its letter of October 31, 2005, to the Executive Director of the State Water Board. Division staff reviewed the proposed compromise and concluded that there remained an unacceptable risk to the State Water Board.

The District, in its November 3, 2005 letter, contended that the Division's withholding of SRF funds caused further delays in Project construction and that the District's actions were within the scope of the SRF loan agreement. Division staff disagreed with the District's contention and recommended to the State Water Board that it adopt a resolution to continue withholding SRF funds from the District until the Division receives official notification of resumption of work on all three construction contracts, as previously approved, for construction of a wastewater treatment plant at the Tri-W site.

On November 16, 2005, the State Water Board adopted Resolution No. 2005-0083, which specified the conditions under which the Division could resume making loan disbursements to the District:

The State Water Board shall continue to withhold the SRF Funds from the District until the Division receives:

- a. Official notification of resumption of work by November 23, 2005, on all three construction contracts, for construction of a wastewater treatment plant at the Tri-W site, in compliance with previous approvals; or
- b. Official notification by the District no later than close of business on November 23, 2005, that the District accepts the phased approach put forth by Assemblyman Blakeslee ([Attachment A](#)) requiring:
 - 1) Immediate groundwater remediation,
 - 2) Immediate filing of opposition to Measure B with the appellate court,
 - 3) Secure immediately a bond to cover the amounts reimbursed from the SRF prior to passage of a Proposition 218 assessment vote, and
 - 4) Measure B repeal vote.

Resolution No. 2005-0083 also authorized the Executive Director to request the assistance of the Attorney General in any necessary litigation to defend the State Water Board's interest in this SRF loan.

The District declined to accept the State Water Board's conditions in Resolution No. 2005-0083 by letter of November 23, 2005 and District Resolution No. 2005-49. Therefore, Division staff recommends withdrawal of the District's funding commitment and recovery of all SRF funds disbursed to the District with interest. All funds de-committed from the District's Project, and disbursed fund recovered from the District, should be returned to the SRF loan program and made available for commitment to other ready projects (see Fiscal Impact below) in accordance with the SRF Policy and applicable standing resolutions.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution to withdraw the SRF loan commitment to the District and recover funds previously disbursed to the District for its Project?

Should the funds de-committed to the Project and recovered from the District be returned to the SRF loan program to fund other ready projects in accordance with the SRF Policy and applicable standing resolutions?

FISCAL IMPACT

A total of \$6,486,144 has been disbursed to the District from the \$134,761,390 in the executed SRF loan agreement for the District's Project. Withdrawal of the commitment of the funds not yet disbursed to the District will immediately provide an additional \$128,275,246 in SRF funds for other ready projects. Table 1 below itemizes the ready projects the Division expects will receive a preliminary loan commitment before December 31, 2005.

Table 1 – Fiscal Impact of Withdrawing the District's SRF Loan Commitment and Expected Loan Commitments By December 31, 2005

(as of 11/22/05)

	SFY 2005-06	SFY 2006-07	SFY 2007-08	SFY 2008-09	SFY 2009-10
Beginning Balance:	\$394,995,892	\$171,505,147	\$180,399,162	\$262,068,777	\$403,270,654
Estimated Repayments	\$176,227,441	\$173,544,231	\$183,544,231	\$193,544,231	\$203,544,231
Debt Service on Revenue Bonds	(\$33,474,879)	(\$33,439,354)	(\$33,357,579)	(\$31,893,104)	(\$31,758,441)
Estimated Capitalization Grants	\$82,745,541	\$51,840,185	\$0	\$0	\$0
State G.O. Bond proceeds (less state admin. match)	(\$606,678)	\$0	\$0	\$0	\$0
Local Match Credits	\$20,219,494	\$7,065,478	\$4,023,841	\$4,166,750	\$4,166,750
Est. SMIF Interest:	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Estimated Disbursements	(\$401,226,162)	(\$139,024,483)	(\$38,640,879)	(\$25,000,000)	(\$25,000,000)
Subtotal	\$240,880,649	\$233,491,205	\$297,968,777	\$404,886,654	\$556,223,195
Withdrawal of Los Osos CSD, Proj. No. 4014-110	\$68,583,590	\$53,630,500	\$6,061,156		
North Marin WD Water Recycling, Proj. No. 4844-110		(\$3,000,000)	(\$800,000)		
City of La Mesa Sewer System Improvements, Proj. No. 4729-110	(\$2,000,000)	(\$6,500,000)	(\$5,000,000)	(\$1,000,000)	
City of La Canada Flintridge Area 3, Proj. No. 4252-510	(\$24,094,502)	(\$2,834,043)			
Stege Sanitary District, Proj. No. 4665-210	(\$706,000)				
City of Hayward WPCF Phase I, Proj. No. 4825-110	(\$18,575,000)	(\$20,758,000)	(\$14,300,000)	(\$616,000)	
Inland Empire Water Recycling Phase II, Proj. No. 4899-110		(\$13,500,000)			
Yucaipa Valley Water District, Proj. No. 4200-110		(\$4,000,000)	(\$15,000,000)	(\$15,000,000)	
City of Petaluma, Proj No. 4693-110	(\$35,000,000)	(\$35,000,000)	(\$35,000,000)	(\$34,000,000)	
City of Lompoc, Proj. No. 4829-110		(\$25,000,000)	(\$24,000,000)		
Yucaipa Valley Water District, Proj. No. 4200-110		(\$24,000,000)	(\$2,000,000)		
Reserve for Small Community Wastewater Grant Projects	(\$24,000,000)	(\$20,000,000)	(\$15,800,000)		
Balance	\$205,088,737	\$132,529,662	\$192,129,933	\$354,270,654	\$556,223,195

Notes:

- Estimated Repayments include repayments from existing and future loans.
- Local match credits consist of G. O. Bond funds used as state match with previous Capitalization Grants but not disbursed due to previous local agency expenditures for local match loans funded with federal funds from those previous Capitalization Grants.
- Estimated disbursements include disbursements remaining on existing loans as well as disbursements anticipated on loans executed for projects with existing commitments. The Division revises the estimated disbursements total monthly as cash draw forecasts are updated.

REGIONAL WATER BOARD IMPACT

The Central Coast Regional Water Quality Control Board (Central Coast Regional Water Board) has prescribed Waste Discharge Requirements (WDR) for the discharge of treated wastewater from the proposed Project, and adopted Time Schedule Order (TSO) No. 00-131 on October 27, 2000,

requiring completion of the Project to stop on-going pollution of groundwater. With the current suspension of work, and the District's intent to relocate the wastewater treatment plant, the Central Coast Regional Water Board, on October 6, 2005, issued an Administrative Civil Liability complaint to the District (R3-2005-0137) in the amount of \$11,190,000. The ACL complaint is scheduled for public hearing on December 1, 2005. The District will have to seek alternative funding to comply with the TSO if the SRF loan commitment is withdrawn.

STAFF RECOMMENDATION

The State Water Board should withdraw the SRF loan commitment for the District's Project and recover funds previously disbursed to the District.

Directs that all former Project funds be returned to the SRF loan program for funding other ready projects in accordance with the SRF Policy and applicable resolutions.

Policy Review _____

Legal Review _____

Fiscal Review _____

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-

WITHDRAWAL OF FUNDING FOR THE LOS OSOS COMMUNITY SERVICES DISTRICT
(DISTRICT); WASTEWATER COLLECTION, TREATMENT AND DISPOSAL PROJECT
(PROJECT); STATE REVOLVING FUND (SRF) LOAN PROJECT NO. C-06-4014-110

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on February 16, 1995, adopted the *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), and amended it on January 22, 2003;
2. The State Water Board, on June 17, 2004, adopted the state fiscal year 2004/2005 SRF Loan Program Priority List which included the District's Project in Priority Class A;
3. On January 20, 2005, the State Water Board approved a preliminary loan recommitment of \$93,000,000 for construction of the District's Project;
4. The District's action to suspend work and intent to relocate the wastewater treatment plant site had prompted Division of Financial Assistance (Division) staff to issue a Notice to Withhold disbursements of SRF funds to the District in a letter dated October 18, 2005;
5. Division staff has reason to believe that the District's action is in breach or has threatened breach of the SRF loan agreement by substantially changing the scope of the approved Project;
6. On November 16, 2005, the State Water Board adopted Resolution No. 2005-0083 to continue withholding disbursement requests of SRF funds until the Division receives:
 - a. Official notification of resumption of work by November 23, 2005, on all three construction contracts, for construction of a wastewater treatment plant at the Tri-W site, in compliance with previous approvals; or
 - b. Official notification by the District no later than close of business on November 23, 2005, that the District accepts the phased approach put forth by Assemblyman Blakeslee (Attachment A) requiring:
 - (1) Immediate groundwater remediation,
 - (2) Immediate filing of opposition to Measure B with the appellate court,
 - (3) Secure immediately a bond to cover the amounts reimbursed from the SRF prior to passage of a Proposition 218 assessment vote, and
 - (4) Measure B repeal vote; and
7. The District declined to accept the State Water Board's conditions in Resolution No. 2005-0083 by letter of November 23, 2005 and District Resolution No. 2005-49.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board:

1. Withdraws the SRF loan commitment for the District's Project and directs staff to pursue all appropriate remedies to recover funds previously disbursed to the District for its Project.
2. Directs that all former Project funds be returned to the SRF loan program for funding other ready projects in accordance with the SRF Policy and applicable resolutions.

CERTIFICATION

The undersigned, Acting Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 9, 2005.

Selica Potter
Acting Clerk to the Board